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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HAN KI CHO

Appeal 2009-007136
Application 10/765,107
Technology Center 3600

Decided: June 29, 2010

Before: LINDA E. HORNER, JENNIFER D. BAHR, and KEN B.
BARRETT, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Han Ki Cho (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1-5 and 9-12. Claims 6-8 and 13-48 have been withdrawn from consideration. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to a pedestal fastened to a washing machine or dryer. Spec., para. 2.

Claim 1, reproduced below, is illustrative of the claimed invention.

1. A pedestal for a washing machine or a laundry dryer, said pedestal comprising:

a pedestal body supporting a bottom portion of the washing machine or laundry dryer; and

at least one coupling means provided both to a lateral side of the washing machine or the laundry dryer and a lateral side of the pedestal body for coupling the washing machine or the laundry dryer with the pedestal body.

The Rejections

Appellant seeks review of the Examiner's rejections under 35 U.S.C. § 103(a) of claims 1-5, 9, 11, and 12 as unpatentable over Blumenschein¹ (DE 19838631 published Mar. 2, 2000)² and Sill (US 6,578,902 B2 issued Jun. 17, 2003); of claim 10 as unpatentable over Blumenschein, Sill, and

¹ The Examiner and Appellant refer to this document as "DE '631."

² The Examiner provides an English translation of this document. Appellant does not traverse the accuracy of the translation. Page references to Blumenschein in this opinion are to the translated document.

Mason (US 1,756,984 issued May 6, 1930); and of claims 1-5, 9, and 10 as unpatentable over Appellant's admitted prior art (hereinafter AAPA) (figures 1A-1B) and Sill.

SUMMARY OF DECISION

We AFFIRM.

OPINION

Contentions

In two separate rejections, the Examiner found that both Blumenschein and AAPA describe a pedestal supporting a bottom portion of a washing machine. Ans. 3, 5. The Examiner found that both Blumenschein and AAPA fail to teach a coupling means provided to lateral sides of the machine and the pedestal. *Id.* However, the Examiner found that Sill describes a coupling means to join to adjacent members arranged on the same plane. Ans. 3-4, 5-6. Therefore, the Examiner concluded that it would have been obvious to utilize the coupling means of Sill to attach the lateral sides of the washing machine and pedestal of Blumenschein or AAPA to "enhance the stability and rigidity of the combined units" (Ans. 4, 6) due to the "increased joined surface areas of the coupled units" (Ans. 4) and "the positive coupling of the units" (Ans. 6).

Appellant argues that the Examiner's combination relies on improper hindsight reasoning to identify "the non-analogous art" Sill as prior art. Appeal Br. 13. In particular, Appellant argues that Sill is not in the present field of endeavor and not relevant to the particular problem faced in the present appeal. Appeal Br. 14. In contesting the Examiner's rejection of

claims 1-5, 9, 11, and 12 as unpatentable over Blumenschein and Sill, Appellant argues all the claims together as a group. Likewise, in contesting the rejection of claims 1-5, 9, and 10 as unpatentable over AAPA and Sill, Appellant argues all of the claims together as a group. We select claim 1 as the representative claim for both rejections. 37 C.F.R. § 41.37(c)(1)(vii) (2009). Appellant argues the rejection of claim 10 as unpatentable over Blumenschein, Sill, and Mason separately. Appellant relies on the arguments presented for the Blumenschein/Sill combination in arguing claim 10.

Issue

Is Sill non-analogous art?

Findings of Fact

Sill describes sidewall joints 14 that serve to couple consecutive sidewall panels 15 and 16 (or 115 and 116), forming a sidewall 12 of a trailer, container, truck body, or other cargo carrying body. Col. 4, ll. 18-22, col. 6, ll. 31-38. The joints 14 (or 114) are formed of splicer plates 23 and 24 (or 123 and 124) connected using adhesive sheets 25 and 26 (or 125 and 126) and rivets 34 to sandwich and thus join the sidewall panels together. Col. 6, ll. 1-5.

Analysis

Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Clay*, 966

F.2d 656, 658-59 (Fed. Cir. 1992). *See also In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986); *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979).

For purposes of showing obviousness under 35 U.S.C. § 103(a),

"[a] reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." In other words, "familiar items may have obvious uses beyond their primary purposes."

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379-80 (Fed. Cir. 2007) (citations omitted).

Appellant argues that Sill is not relevant "to the particular problem with which the inventor of the [present invention] was concerned." Appeal Br. 14, 16-18. However, the motivation question arises in the context of the general problem confronting the inventor rather than the specific problem solved by the invention. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419-20 (2007) ("In determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls"). The present invention deals with fastening the washing machine to the pedestal. *See, e.g., Spec.*, para 2. Sill describes a fastener, which is relevant to the problem of how to connect the washing machine to the pedestal.

Appellant next argues that Sill addresses a problem "unrelated to the problem addressed by" the present invention. Appeal Br. 15-16, 18. However, just as Appellant's particular motivation does not control the obviousness inquiry, neither does the particular motivation of the inventors

of the prior art reference. "The use of patents as references is not limited to what the patentees describe as their own invention or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Lemelson*, 397 F.2d 1006, 1009 (CCPA 1968). "Common sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *KSR*, 550 U.S. at 420. Thus, even though Sill is concerned with overcoming difficulties in connecting two objects that form a wall in a trailer, Sill nevertheless describes a structure useful in connecting two objects.

Conclusion

Sill's connecting structure is analogous prior art and the Examiner's use of the Sill reference in the rejections is not based on impermissible hindsight. Therefore, we are not persuaded of error in the Examiner's rejection of independent claim 1, and claims 2-5, 9, 11, and 12, which fall with claim 1, as unpatentable over the proposed combination of Blumenschein and Sill or the rejection of claim 1, and claims 2-5, 9 and 10, which fall with claim 1, as unpatentable over the proposed combination of AAPA and Sill. Likewise, we are not persuaded of error in the Examiner's rejection of claim 10 as unpatentable over Blumenschein, Sill, and Mason.

DECISION

We affirm the Examiner's decision as to claims 1-5 and 9-12.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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